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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/644,435
Filing Date: August 19, 2003
Appellant(s): TAN, DANIEL BRIAN

David A. Belasco
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 24, 2009 appealing from the Office action mailed June 17, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,435,350 B1	HUANG et al.	8-2002
5,078,667	WILLIAMS	1-1992
6,822,051 B2	HARRIS	11-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections – 35 USC § 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 - 7, 9 - 23, 26 - 29 and 31 - 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al (U.S. Patent No. 6,435,350) in view of Williams (U.S. Patent No. 5,078,667) and Harris (U.S. Patent No. 6,822,051 B2).

With regard to Claims 1, 7 and 29, Huang et al disclose a self- opening bag stack (bag pack; column 7, lines 32 -33) comprising a plurality of stacked bags (column 11, lines 40- 44) which is a film bag (column 17, line 46); the bags are frangibly bonded (column 7, lines 53 - 55), and are therefore releasably adhered in substantial registration (column 5, lines 35 - 38); each of the bags include front and rear film walls (column 7, lines 38 - 40) having first and second side edges, a top edge and a bottom edge (column 7, lines 40 - 44), the front and rear walls integrally joined at the first and second side edges (joined together by pleated side walls; column 7, lines 40 - 44) and secured together at their bottom edges (by sealing; column 7, lines 40 - 44) and defining an open mouth portion adjacent the top edges (column 7, lines 38 - 40); the entire outer surface of the bag is corona treated (column 2, lines 5 - 9); the bag comprises plastic (column 12,

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line 53); Huang et al fail to disclose a bag comprising 52 - 68 wt.% high density polyethylene and 20 - 30 wt. % linear low density polyethylene.

Williams teaches a bag (column 3, lines 30 - 32) comprising 52 - 68 wt.% high density polyethylene and 20 - 30 wt. % linear low density polyethylene (column 6, lines 12 - 20) for the purpose of obtaining a bag which is produced without stress relief notches (column 3, lines 28). One of ordinary skill in the art would therefore have recognized the advantage of providing for the composition of Williams in Huang et al, which comprises a bag, depending on the desired production of the end product.

Harris teaches the use of a high density polyethylene composition (column 10, lines 14 - 16) comprising a blend of high molecular weight high density polyethylene and medium molecular weight high density polyethylene (column 7, lines 16 - 24) in the making of a bag (column 4, lines 56 - 60) for the purpose of making a bag that is suitable for heavy duty applications (column 4, lines 56 - 60). One of ordinary skill in the art would therefore have recognized the advantage of providing for the blend of Harris in Huang et al, which comprises a bag, depending on the desired application of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a bag comprising 52 - 68 wt.% high density polyethylene and 20 - 30 wt. % linear low density polyethylene in Huang et al in order to obtain a bag which is produced without stress relief notches as taught by Williams and a bag comprising a blend of high molecular weight high density polyethylene and medium molecular weight high density polyethylene in order to obtain a bag that is suitable for heavy duty applications as taught by Harris.

Harris fails to disclose a blend having the claimed amounts of high molecular weight high density polyethylene to medium molecular weight high density polyethylene. However, Harris teaches the selection of the amounts of high molecular weight high density polyethylene to medium molecular weight high density polyethylene depending on the desired application of the end product (column 7, lines 16 - 24). It therefore would have been obvious for one of ordinary skill in the art, through routine experimentation, to have selected the amounts depending on the desired application as taught by Harris

With regard to Claims 4 and 26, the bags disclosed by Huang et al are recyclable (column 1, lines 35 - 40) Huang et al fail to disclose bags that comprise 10 - 20 wt % recycled material; however, Huang et al disclose bags that are recyclable or disposable by incineration (column 1, lines 35 - 40) and therefore disclose the selection of the amount of recycled material depending on the desired amount of necessary incineration. Therefore, one of ordinary skill in the art would have recognized the utility of varying the amount of recycled material to obtain the desired amount of incineration. Therefore, the amount of incineration would be readily determined through routine optimization of the amount of recycled material by one having ordinary skill in the art depending on the desired use of the end product as taught by Huang et al. It therefore would be obvious for one of ordinary skill in the art to vary the amount of recycled material in order to obtain the desired amount of incineration, since the amount of incineration would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Huang et al.

With regard to Claims 5 and 27, the linear low density polyethylene taught by Williams has a density of 0.930 or less (column 6, lines 60 - 62); Williams therefore teaches a linear low density polyethylene in which 10 - 15wt. % has a density ranging from 0.923 - 0.924 grn/cc.

With regard to Claims 6 and 28, the linear low density polyethylene taught by Williams has a melt index of 0.930 or less (column 7, line 3); Williams therefore teaches a linear low density polyethylene in which 10 - 15 wt. % has a melt index ranging from 0.25 - 0.30 gm/10 minutes.

With regard to Claims 9, 15, 18, 31, 35 and 38, the stack taught by Huang et al comprises a cold staking area piercing and extending transversely through the bag stack for maintaining the bags in the bag stack in substantial registration (cold pin bonding; column 14, line 34).

With regard to Claims 10, 16, 19, 32, 36 and 39, the stack taught by Huang et al comprises a hot melt pin area piercing and extending transversely through the bag stack for maintaining the bags in the bag stack in substantial registration (hot pin welds; column 15, lines 33 - 35).

With regard to Claims 11 and 33, each of the bags disclosed by Huang et al includes longitudinally oriented side gussets (pleated side walls; column 7, lines 39 - 40).

With regard to Claims 12, 14, 34 and 37, Huang et al disclose a dispensing rack having horizontal arms (Projections; column 10, line 29 - 31; Figure 10), and a pin area piercing as stated above; Huang et al therefore disclose first and second opening penetrating and extending transversely through the bag stack in an upper portion of the bags and spaced downwardly from the top edge, spaced inwardly from the first and second side edges and serving to support the bag stack on horizontal arms of a dispensing rack.

With regard to Claim 13, the bags disclosed by Huang et al comprise an upper seam sealing the front wall to the rear wall to the respective top edges (column 2, lines 13 - 15) and a U - shaped cut - out disposed in an upper portion of the bag and commencing at a first point along the upper seam spaced inwardly from the first side edge and extending to a second point along the upper seam inwardly from the second side edge, the cut - out extending downwardly toward the bottom edges, thereby forming an open mouth portion and a pair of bag handles (column 7, lines 30 - 46; Figure 1).

With regard to Claims 17, the bag disclosed by Huang et al comprises a central tab 'portion connected to the open mouth portion of the bags in the bag stack (column 7, lines 46 - 48) and an aperture extending transversely through the bag stack within the central tab portion for suspending the bag stack from a dispensing member (suspension aperture (column 14, lines 43 -45).

With regard to Claims 20 - 21 and 40 - 41, the central tab portion of each bag disclosed by Huang et al is detachably connected to said open mouth portion of the bags (a tab aperture, the bags being held together by frangible bond; the central tab portion of each bag therefore includes a frangible section, the frangible section extending from the aperture to an outer edge of the central tab portion and the frangible portion rupturing upon removal of the bag from the dispensing member).

With regard to Claims 22 and 42, the entire outer surface of the bag disclosed by Huang et al is corona treated, as stated above, and therefore has a surface tension on the corona treated surface of at least 38 dynes.

With regard to Claim 23, the bag disclosed by Huang et al is a t - shirt type bag (column 7, lines 40 - 41) and has laterally spaced upwardly extending bag handles, an open mouth portion between the handles and central support tab portion extending upwardly from the open mouth portion (column 7, lines 45 - 48; Figure 1).

Claims 2 - 3 and 24 - 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al (U.S. Patent No. 6,435,350) in view of Williams (U.S. Patent No. 5,078,667) and Harris (U.S. Patent No. 6,822,051 B2) and further in view of Mawson et al (U.S. Patent Publication No. 2002/0107342).

Huang et al, Williams and Harris disclose a bag as discussed above. With regard to Claims 2 - 3 and 24 - 25, Huang et al, Williams and Harris fail to disclose a bag comprising 0.5 wt. % slip and antiblock compound and 1 - 3 wt. % calcium carbonate.

Mawson et al teach a bag (paragraph 390) comprising 0.5 wt. % slip and antiblock compound and 1 - 3 wt. % calcium carbonate (paragraph 394) for the purpose of obtaining a bag for heavy duty use (paragraph 390). One of ordinary skill in the art would therefore have recognized the advantage of providing for the slip and antiblock compound and calcium carbonate of Mawson et al in Huang et al and Williams, which comprises a bag, depending on the desired use of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for 0.5 wt. % slip and antiblock compound and 1 - 3 wt. % calcium carbonate in Huang et al and Williams in order to obtain a bag for heavy duty use as taught by Mawson et al.

(10) Response to Argument

Appellant argues that Harris is non - analogous art because Harris is directed to the making of pipes, instead of being directed to the making of bags.

However, as stated in the previous Action, Harris clearly states that the disclosed resin is for the making of bags (T – shirt bags; column 4, lines 55 – 62); furthermore, the bags taught by Harris are T - shirt bags, which are the type of bag disclosed by Huang et al. Harris is therefore not non - analogous.

Appellant also argues that the teaching of bags in Harris only refers to the type of film grade.

However, because Harris teaches that the resin is of a grade that is suitable for the making of bags, Harris teaches the use of the resin in the making of bags, as well as pipes.

Appellant also argues that the claimed composition comprises three resins, and that Huang et al comprises two resins.

However, as stated in the previous Action, the combination of Huang et al, Williams and Harris comprises three resins, because it would have been obvious for one of ordinary skill in the art to provide for both high density polyethylene comprising both the high molecular weight high density polyethylene and medium molecular weight high density polyethylene in Harris.

Appellant also argues that it would not have been obvious to select the amount of recyclability because recycling is known.

However, the previous Action does not state that it would not have been obvious to select the amount of recyclability because recycling is known; furthermore, as stated in the previous Action, the resin disclosed by Huang et al is recyclable.

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Appellant also argues that the title of Harris is directed to the making of pipe, and that the abstract of Harris states that the disclosed resin is especially useful for manufacture of profile and corrugated pipe and / or pipe fitting applications, and piping systems.

However, as stated above, although Harris teaches that the resin is useful for the making of pipe, and pipe fitting, and corrugated pipe, Harris does not state that the uses of the resin are limited to the making pipe, and pipe fitting, and corrugated pipe. It is noted that Harris specifically states the use of the making of other articles, and states that the articles listed is not a limiting list (column 3, lines 40 - 45); furthermore, as stated above, because Harris teaches that the resin is of a grade that is suitable for the making of bags, Harris teaches the use of the resin in the making of bags, as well as pipes.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Marc A Patterson/

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